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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/398,842 09/17/99 YOUNG

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EXAMINER

WEBB, J

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

05/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/398,842

Applicant(s)

YOUNG ET AL.

Examiner

Jamisque A. Webb

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise; and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Independent claims state “a hydrostatic head of at least about 85 mm”. In the specification the applicant only gave the test apparatus, but did not give a test method associated with a hydrostatic head measurement.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. With respect to Claim 16: the phrase “skin care composition is transferred from said first surface to said second surface”, this is a method limitation and is inappropriate for an article claim. The examiner suggest the wording “the skin care composition is capable of being transferred from said first surface to said second surface”.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-3 and 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al (6,120,783) in view of Gillespie et al. (5,783,503).

9. With respect to claims 1, 7, 19 and 20: Roe discloses an absorbent article (20) with a backsheet (42), a topsheet (38) and an absorbent core (48) located there between. Roe discloses the use of barrier cuffs (62) with a proximal edge (64), a distal edge (66), where proximal edge is secured to the outercover and uses spacing elastic elements (76). Roe discloses the use of an effective amount of skin care composition provided on the carrier cuffs (see claim 7).

10. Roe, as disclosed above, teaches the use of the barrier cuffs being spunbond polypropylene (column 12, line 66 to column 13, line 26), but fail to teach the use of a fiber having a denier of less than 1.3.

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11. Gillespie teaches the use of microdenier fibers with a denier in the range from 0.1 to 0.3 denier per filament (column 6, lines 28-31) and can be made from polypropylene (column 5, lines 1-16) and are used in spunbond products (column 2, lines 4-8) and can be used for such things as topsheets, backsheets and leg cuffs in diapers (column 7, lines 11-15).

12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the barrier cuffs of Roe be made from the microdenier fibers of Gillespie, in order to produce nonwovens of surprising strength, barrier and cover. (see Gillespie, abstract)

13. With respect to Claims 2, 5 and 6: Roe discloses the barrier cuffs being made using spunbonded techniques, which does not have any meltblown fibers. (column 12, line 66 to column 13, line 26).

14. With respect to Claim 3: Roe discloses the topsheet and the barrier cuffs are made from the same element (column 13, lines 59-65) and discloses the topsheet having a basis weight of 14 grams per square meter (column 11, lines 1-12).

15. With respect to Claim 8: see Roe claim 13.

16. With respect to Claim 9: see Roe Claim 8.

17. With respect to Claim 10: see Roe Claim 9.

18. With respect to Claim 11: see Roe Claim 10.

19. With respect to Claim 12: see Roe Claim 12.

20. With respect to Claim 13-16: Roe discloses a skin care composition being placed either the body facing surface, or the garment facing surface and capable of transferring from the garment facing surface to the body facing surface (column 8, line 54 to column 9, line 22).

21. With respect to Claim 17: Roe discloses the use of gasket cuffs (56).

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22. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al (6,120,783) in view of Gillespie et al. (5,783,503) as applied to claim 1 above, and further in view of Shultz et al. (6,103,647).

23. Roe and Gillespie disclose the use of polypropylene microdenier fibers, but fail to disclose the use of metallocene polypropylene spunbond fibers.

24. Shultz discloses the use of metallocene polymers, such as polypropylene, and can be developed by spunbonding (column 9, lines 25-32; column 10 lines 63-65).

25. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the polypropylene fibers of Roe and Gillespie to be metallocene polypropylene fibers, as disclosed by Shultz, in order to provide a fabric that has excellent barrier, breathability, elasticity and a pleasing hand. (see Shultz column 9).

26. Claims 1-2, 5-6, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson (4,695,278) in view of Gillespie et al. (5,783,503).

27. With respect to Claims 1 and 19: Lawson discloses an absorbent article (20) with a backsheet (42), a topsheet (38) and an absorbent core (48) located there between. Lawson discloses the use of barrier cuffs (62) with a proximal edge (64), a distal edge (66), where proximal edge is secured to the outercover (Figure 3) and uses spacing elastic elements (76).

28. Lawson, as disclosed above, teaches the use of the barrier cuffs being spunbond polypropylene (column 9, lines 1-12), but fail to teach the use of a fiber having a denier of less than 1.3.

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29. Gillespie teaches the use of microdenier fibers with a denier in the range from 0.1 to 0.3 denier per filament (column 6, lines 28-31) and can be made from polypropylene (column 5, lines 1-16) and are used in spunbond products (column 2, lines 4-8) and can be used for such things as topsheets, backsheets and leg cuffs in diapers (column 7, lines 11-15).

30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the barrier cuffs of Lawson be made from the microdenier fibers of Gillespie, in order to produce nonwovens of surprising strength, barrier and cover. (see Gillespie, abstract)

31. With respect to Claim 2, 5 and 6: Lawson discloses that the barrier cuffs may be spunbonded, therefore no (0%) meltblown fibers are used.

32. With respect to Claim 17: Lawson discloses the use of gasket cuffs (56).

33. With respect to Claim 18: Lawson discloses the topsheet and the barrier cuffs are made from the same element (column 9, lines 52-57).

34. Claims 7-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson (4,695,278) in view of Gillespie et al. (5,783,503) as applied to claim 1 above, and further in view of Roe (5,607,760).

35. With respect to Claim 7 and 20, Lawson and Gillespie, as disclosed above, teach the use of a diaper with barrier cuffs, but fail to teach the use of an effective amount of skin care composition disposed on the cuffs.

36. Roe discloses the use of skin care composition disposed on any part of the diaper where it can come into contact with the wearer's skin, such as on the leg cuffs (column 25, lines 26-32), and the skin care composition is semisolid or solid at 20 °C (see claim 1).

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37. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the skin care composition of Roe, be disposed on the barrier cuffs of Lawson, in order to reduce the adherence of BM to the skin of the wearer, thereby improving the ease of BM clean up and enhancing skin softness. (see Roe column 3)

38. With respect to Claim 8: see Roe Claim 15.

39. With respect to Claim 9: see Roe Claim 1.

40. With respect to Claim 10: see Roe Claim 1:

41. With respect to Claim 11: see Roe, column 18, lines 46-63.

42. With respect to Claim 12: Roe discloses the use of Other Optional Components in the skin care composition such as aloe vera (column 23, lines 26-42, specifically line 38).

43. With respect to Claims 13-16: Roe discloses the skin care composition being disposed on the body facing side of the article, however Roe discloses the lotion can alternatively be disposed on the surface facing away from the body and during the use the lotion would be transferred to the body surface of the article (column 25, lines 19-31).

44. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson (4,695,278) in view of Gillespie et al. (5,783,503) as applied to claim 1 above, and further in view of Shultz et al. (6,103,647).

45. Roe and Gillespie disclose the use of polypropylene microdenier fibers, but fail to disclose the use of metallocene polypropylene spunbond fibers.

46. Shultz discloses the use of metallocene polymers, such as polypropylene, and can be developed by spunbonding (column 9, lines 25-32; column 10 lines 63-65).

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47. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the polypropylene fibers of Roe and Gillespie to me metallocene polypropylene fibers, as disclosed by Shultz, in order to provide a fabric that has excellent barrier, breathability, elasticity and a pleasing hand. (see Shultz column 9).

Response to Amendment

48. The Declaration under 37 CFR 1.132 filed 4/17/01 is sufficient to overcome the rejection of claim 1, 19 and 20 based upon the fact that the material "Celestra" does not have a denier that is less than 1.3.

49. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

50. With respect to Applicants argument that the Roe (5,607,760) reference cannot be used due to the face that the applicant has claimed priority to USSN 08/345,159 which was filed November 28, 1994: The applicant's independent claims have the nonwoven cuff made from spunbonded fibers having a denier less than 1.3, which is not present in USSN 08/345,159. Therefore due to the fact that all the independent claims contain limitations that were not in the parent case USSN 08/345,159 they, along with all claims dependent there on, do not receive the benefit of the early filing date, and the Roe (5,607,760) reference is still valid.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw *JW*
May 1, 2001

John G. Weiss
John G. Weiss
Supervisory Patent Examiner
Group 3700